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No. 83-558

IN THE

Supreme Court of the United States

October Term, 1983

Irving Independent School District,
Petitioner,

v.

Henri and Mary Tatro, Individually and
Next Friend of Amber Tatro, A Minor,
Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT

BRIEF AMICUS CURIAE IN SUPPORT OF PETITIONER

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AMICUS CURIAE BRIEF OF THE NATIONAL SCHOOL BOARDS ASSOCIATION IN SUPPORT OF PETITIONER

INTEREST OF THE AMICUS

This brief is filed with consent of both parties. Letters of consent are on file with the Clerk of this Court.

Amicus curiae, National School Boards Association (NSBA), is a nonprofit federation of this nation's state school board associations, the District of Columbia school board and the school boards of the offshore flag areas of the United States. Established

in 1940, NSBA is the only major national educational organization representing school boards and their members. Its membership is responsible for the education of more than ninety-five percent of this nation's public school children.

Each of the 16,000 school districts which NSBA represents receives or is eligible to receive financial assistance under the Education for All Handicapped Children Act of 1975, 20 U.S.C. § 1401 et seq. (the Act).

ISSUE PRESENTED FOR REVIEW

Whether defining "related services" under the Act to include clean intermittent catheterization (CIC) is consistent with the language of the Act and its legislative history.

ARGUMENT

I. INTRODUCTION

The analysis of the Fifth Circuit in both Tatro I, 625 F.2d 557 (1980) and Tatro II, 703 F.2d 823 (1983) is founded on a premise which has little or no basis in either the statute itself or its legislative history.

Under the ruling below, a school district is responsible for the provision of every health service required by a handicapped child if it must be administered during the school day and if it can be administered by someone other than a licensed physician. According to the lower court's rationale, a service is "related" to the special education of the child merely if the child needs the service during the school day, regardless of whether the service is educational in nature. Amicus agrees that the Congress intended to require the provision of all educational services necessary for the child to benefit from

special education, even though some of those educational services have medical or health overtones. But the Congress also intended to exempt services which are solely medical or health services.

20 U.S.C. § 1401(17) defines "related services" as:

> transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children.

In order to avoid the express statutory exemption of medical services, the lower court narrowly defines such services as those which can only be provided by a physician. Thus, any service which can be provided by someone other than a physician could come within the

rubric of the lower court's strained definition. While the Congress included a requirement that districts provide diagnostic and evaluation services (even though such services can be considered "medical,") the primary purpose of this type of medical service is to assist in the education of the child rather than to sustain the child's life.

The decision below goes beyond the intent of Congress in its attempt to fund education services for handicapped children. It misapplies the exemption in the Act of "medical services." It results in a different standard of compliance in each state, based on the vagaries of the laws on the practice of medicine. It confuses the "related services" requirement with the requirement of "least restrictive environment." Finally, the decision below turns the non-discrimination requirement of the Act into an independent requirement that schools provide health

services to handicapped children, even when such services are not available to non-handicapped children.

II. THE LOWER COURT'S REQUIREMENT IS CONTRARY TO THE STATUTE AND THE INTENT OF CONGRESS.

Mandating that schools provide CIC, and other services related exclusively to the health of the child as "related services" under the Act is contrary to the intent of Congress in passing the Act.

Senator Jennings Randolph, the Senate sponsor of the Act, in his opening remarks during Senate debate on the Act, summarizes the purposes of the Act:

> First, all handicapped children living in a State who are in need of special education are identified, located, and evaluated; second, a goal is established to provide full educational opportunities to all handicapped children; third, priorities for services are established first with respect to handicapped children not receiving an education and second with respect to severely handicapped children

> receiving an inadequate education; fourth, procedures are established to safeguard the rights of handicapped children and their parents in decisions relating to identification, evaluation, and educational placement; fifth, a free appropriate public education be available for all handicapped children between the ages of 3 and 18 within a State. 121 Cong. Rec. S 10960 (June 18, 1975).

Senator Randolph's remarks evidence the intent of Congress to tie all requirements in the Act to the educational needs of handicapped children. It was not designed to address all the needs of handicapped children.

As this Court stated in the landmark case under the Act of **Hendrick Hudson v. Rowley,** 102 S. Ct. 3034 (1982):

> We therefore conclude that the 'basic floor of opportunity' provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.

Respondents have not contended that Amber Tatro is not receiving an educational benefit

from the specialized instruction provided to her. Demands for CIC, a health service, are completely extraneous to the quality of Amber's education.

The Act defines "handicapped children" as those who "because of their impairments require special education and related services." Thus, if Amber's only "handicap" were her neurogenic bladder condition, she would not be "handicapped" under the Act because that condition alone does not give rise to a need for specialized instruction. The only reason the Act applies here at all is because of Amber's additional handicap which results in her need for specialized educational services. Congress was not attempting in the Act to fund or to require school districts to fund, any services for handicapped children other than those directly related to the special educational needs of the child.

In order to discern the intent of Congress, the Court's attention is directed to the original version of the Act as passed by the Senate. 121 Cong. Rec. S 10956 (June 18, 1975). That version did not, in its definition of "related services," include either medical or counseling services. The House version, however, did include such services but provided that the services were limited to those required for diagnosis and evaluation purposes only. The final version includes the House requirement and the limitation on the requirements.

Thus, Congress clearly expressed its intent to require the provision of medical services only where they are necessary for diagnosis or evaluation of the child. Apparently it was felt that diagnostic and evaluation services might not be provided by school districts unless expressly included in the statute. However, to clarify its intent

the Congress stated explicitly that the "medical" requirement goes no further than just diagnosis and evaluation.

The lower courts' attempt to avoid the express statutory limitation by defining "medical" in terms of who provides the service rather than the nature of the service, has no basis in the statute. The term "medical" in the statute was intended by the Congress to do nothing more than differentiate between services which are educational (although including health components) and services which are strictly health services. There is nothing in the statute or its history to support an argument that the Congress used the term "medical" to differentiate between health services provided by someone other than a physician and health services provided by a physician.

We direct this Court's attention to the description in the lower court's opinion of

the CIC procedures, 703 F.2d 823, 829. See Appendix. The description clearly shows that the procedure is a "medical procedure" designed solely to meet physical health needs rather than a diagnostic or evaluation device.

The lower court points out in a footnote, 625 F.2d at 564, n. 17, that the statutory definition of "related services" includes "physical and occupational therapy and recreation" as examples of "related services." The court states that it fails "to see how these services 'arise from the effort to educate any more than CIC'." A reading of the legislative history will elucidate.

In the debate on the Act, Congress expressed its concern that handicapped children have an opportunity to receive extra-curricular services, in addition to the curriculum designed to meet their unique educational needs. S. Rep. No. 168, 94th Cong., 1st Sess. 12 (1975); H. Rep. No. 332,

94th Cong., 1st Sess. 9 (1975). Thus, for example, the legislative history discusses physical education courses and the fact that such courses should be modified so that handicapped children can participate either along with non-handicapped children or, if appropriate, participate in a separate setting. Id. It also discusses the fact that handicapped children have a right to "health screening, transportation services and all other services which are provided to all children within the school system." S. Rep. No. 168, 94th Cong., 1st Sess. 12 (1975).

Members of both houses expressed concern that handicapped children be provided the opportunity to participate in extra-curricular activities, particularly physical education. "The Committee is concerned, although these services are available to and required of all children in our school system, they are often viewed as a luxury for handicapped children."

S. Rep. No. 168, 94th Cong., 1st Sess. 12 (1975). They cite the Special Olympics, the dance and drama programs at Gallaudet College and other examples of the arts and physical education as viable teaching tools. Id. at 13. Nothing in the legislative history implies, however, that health services not provided to non-handicapped children and not educationally necessary must be provided to handicapped children. All of the discussion on extra-curricular activities and physical education and health services (not evaluative or diagnostic) revolves around the non-discrimination core of the Act. These requirements do not stand alone.

Further, the definition of "special education" includes "instruction in physical education" so it is certainly appropriate to include a reference to "physical therapy" in the definition of "related services" to conform to the special education definition.

All of the services set forth in the definition of "related services" are required because they have a direct relationship to the education of the child, either as a teaching tool or as a means of evaluating the child to determine his educational needs.

To the same extent, as discussed below, where school health services are provided to non-handicapped children they should also be provided to handicapped children, even though some modifications may have to be made to accommodate the unique needs of the handicapped child. However, the average school health service is nothing more than basic first aid and in some instances, simple physical examinations and immunization shots. The existence of such a health clinic should not automatically give rise to a requirement that the school must provide to handicapped children every health service which a school nurse is qualified to provide under

supervision of a physician. Further, not every school has a full-time health clinic or even a part-time nurse and yet, under the decision below, life-saving services which are capable of being provided by a nurse must be provided.

III. THE DEPARTMENT OF EDUCATION REGULATION UNDER THE ACT MAY REQUIRE NO MORE THAN THAT SCHOOLS PROVIDE TO HANDICAPPED CHILDREN THOSE "HEALTH SERVICES," IF ANY, PROVIDED TO NON-HANDICAPPED CHILDREN.

The lower court sets forth its standards as to when a "life support" service must be provided as a "related service": (1) the child must be handicapped so as to require special education; (2) the services must be required by the child during the school day; and (3) it must be one which a nurse or other qualified person can perform.

The lower court cites Department of Education regulation 45 C.F.R. 121.a13(B)(10) (now 34 C.F.R. § 300.13(b)(10)) as authority for the third part of its test. That

provision defines "related services" and states in part: "the term also includes school health services, social work services in schools, and parent counseling and training." The Department's regulation defines "school health services" as those which are "provided by a qualified school nurse or other qualified person." 34 C.F.R. § 300.13(b)(10).

It is unclear from the commentary in the regulation why the Department chose to add "school health services" to the statutory definition of "related services." Such services were not included in the earlier proposed regulation, 41 Fed. Reg. 56,977 (Dec. 30, 1976),[1] and the Department of Education removed the services from the definition in its proposed regulatory changes.

---

[1] Further, the proposed regulation defined "medical services": as "procedures performed by a licensed physician to determine a child's need for special education and related services." 41 Fed. Reg. 56,977, § 121. a.4 (n)(d) (Dec. 30, 1976).

47 Fed. Reg. 33,836 (Aug. 4, 1982). (That proposal was subsequently withdrawn.)

As discussed earlier, Congress intended to require school districts to provide to handicapped children services which are being provided to non-handicapped children, even though in the former instance it may be more difficult or more expensive. Thus, if the Department intended by its regulatory reference to "school health services" merely to assure that handicapped children would have access to school health services, that requirement is authorized by the statute.

However, the effect of the lower court interpretation of the regulation is to make an independent requirement that school districts must provide health services to handicapped children regardless of whether those services are also provided to non-handicapped children. If that interpretation is correct, the Department's regulation is ultra vires.

IV. WHILE STATE LAW SHOULD CONTROL QUESTIONS OF EDUCATIONAL METHODOLOGY, SUCH LAWS SHOULD NOT BE USED IN DEFINING STANDARDS INTENDED TO APPLY NATIONWIDE.

The district court below recognized the anomaly caused by the reliance on state law in determining whether a medical procedure is a "related service" or an exempt "medical service." 516 F. Supp. 968, 975 (1981). In matters of educational methodology we would certainly agree that state law should control. The "courts must be careful to avoid imposing their view of preferable educational methods upon the States." Rowley, 102 S. Ct. at 3051. However, in matters involving basic rights of the handicapped, there should be but one judicial standard. This is particularly true since the state laws on which the courts are to rely in this case are designed to guide medical practitioners and others as to what is or is not the practice of medicine. They are not designed to confer substantive rights.

State law should govern as to who

provides a "related service." See Comment to Department of Education Regulation 34 C.F.R. § 300.13. However, the question as to the nature of the service, i.e., whether it is a health or educational service, and, thus, whether it is required to be provided, should be answered through resort to the statute itself or its legislative history.

The identification process may even be affected if the reasoning of the lower court is to become the law of the land. At the present time handicapped children are identified by their need for specialized education. If they are now to be identified by their need for a medical service - as defined by state medical statutes - the number of handicapped children will be increased and the quality of the education services to be provided to all children may decrease.

Additionally, even though their child is being provided with an "appropriate" education

as defined in **Rowley,** parents may move from state-to-state depending on which state's regulation of the practice of medicine results in more free health services being provided by school districts in the state.

There are only so many responsibilities which society can place on school systems before their main mission - to educate - begins to be seriously jeopardized.

V. WHETHER A SERVICE IS A "RELATED SERVICE" IS NOT DEPENDENT ON THE SETTING OF THE CHILD'S PLACEMENT.

The lower court resorts to the tautological argument that because Amber Tatro's Individualized Education Program (IEP) calls for her education in the regular classroom and because she needs CIC during the school day, the school district must provide the CIC.

Since Amber needs CIC during the school day regardless of where she is placed, the issue is not where she is educated but who

pays for the CIC. Amber Tatro does not need CIC in order to be educated in a regular classroom. She needs CIC in order to live, regardless of the setting of the education.

Although Congress did evidence a preference in the Act for mainstreaming (i.e. education in the least restrictive environment, preferably the regular classroom) of handicapped children, the question of what is a "related service" does not depend on whether the child is in a regular classroom or in a separate setting. Even if the school district had determined that the appropriate setting for Amber was in a special school or institution, the district would remain liable for assuring that the child receives special education and related services, either by providing the services itself or by remaining financially responsible for the education and "related services."

VI. THIS COURT'S INTERPRETATIONS OF § 504 DO NOT REQUIRE 'HEALTH SERVICES' TO BE PROVIDED TO HANDICAPPED CHILDREN UNLESS PROVIDED TO NON-HANDICAPPED.

The courts below, in order to allow attorneys' fees to the "prevailing" plaintiffs, also found a violation of § 504 of the Rehabilitation Act of 1973. That Act provides:

> No otherwise qualified handicapped individual in the United States ... shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance ... 29 U.S.C. § 794.

In the case of Southeastern Community College v. Davis, 442 U.S. 397 (1979), this Court considered its first case brought under § 504. The question in that case was how far an institution of higher education must go to accommodate the handicap of a deaf applicant to its nursing program. The Fourth Circuit had ruled that § 504 required "affirmative

conduct" on the part of Southeastern to modify its program to accommodate the disabilities of applicants, "even when such modifications become expensive."

The Department of Health, Education and Welfare, in its regulation implementing § 504, requires "modifications to [a college's] academic requirements as are necessary to ensure that such requirements do not discriminate on the basis of handicap ...." 34 C.F.R. § 104.44(A). But this Court, in **Davis**, held that:

> [i]f these regulations were to require substantial adjustments in existing programs beyond those necessary to eliminate discrimination against otherwise qualified individuals, they would do more than clarify the meaning of § 504. Instead, they would constitute an unauthorized extension of the obligations imposed by that statute.
>
> The language and structure of the Rehabilitation Act of 1973 reflect a recognition by Congress of the distinction between the evenhanded treatment of qualified handicapped persons and affirmative efforts to overcome the disabilities caused by handicaps. Id. at 410.

The court dismissed the contention of the Government which argued in its amicus brief that § 504 requires affirmative action.

> [I]t is undisputed that respondent could not participate in Southeastern's nursing program unless the standards were substantially lowered. Section 504 imposes no requirements upon an educational institution to lower or effect substantial moodifications of standards to accommodate a handicapped person. Id. at 413.

On April 20, 1981, this Court handed down an opinion in the case of **Pennhurst State School and Hospital v. Halderman,** 451 U.S. 1, 101 S. Ct. 1531 (1981), which although interpreting a law which is distinguishable from the Act at issue here, contains important language relating to interpreting the intent of Congress in passing such laws.

Plaintiffs sought the closing of Pennsylvania's Pennhurst State School and Hospital, a facility for the care and treatment of the mentally retarded, and urged that "community living arrangements" be

established for its residents. The district court held that conditions at Pennhurst violated the federal constitutional right to be provided with "minimally adequate habilitation" in the "least restrictive environment," and also found violations of the Equal Protection Clause, the Eighth Amendment and § 504. Pennhurst was ordered closed and suitable "community living arrangements" provided for all Pennhurst residents. A Special Master was appointed to supervise the implementation of the order.

The court of appeals affirmed the appointment of a Special Master, but declined to reach the constitutional claims, instead resting its order on its construction of the Developmentally Disabled Assistance and Bill of Rights Act. This Act was raised on the court's own initiative; none of the Plaintiffs having raised it.

This Court in **Pennhurst** noted that the

Act in question was passed by the Congress pursuant to its Spending Power rather than under § 5 of the Fourteenth Amendment. Thus,

> the legitimacy of the Congress' power to legislate ... rests on whether the State voluntarily and knowingly accepts the terms of the 'contract' .... There can, of course, be no knowing acceptance if a State is unaware of the conditions or is unable to ascertain what is expected of it. Accordingly, if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously. 101 S. Ct. at 1539-40.

When the State of Texas and the Irving School District accepted funding under P.L. 94-142 and the requirement of providing a "free appropriate education," they did not knowingly accept a requirement that they must provide life-saving devices needed by each handicapped child during the school day.

The question is not, as opined by the court below, whether or not it would be burdensome for the school district to provide the service - but whether it is discriminatory

not to provide it. Should handicapped children have more rights than non-handicapped?

The comment in the Department of Education regulation under § 504 provides an interesting analysis of the duties of health institutions under § 504.

> One common misconception about the regulation is that it would require specialized hospitals and other health care providers to treat all handicapped persons. The regulation makes no such requirement. Thus, a burn treatment center need not provide other types of medical treatment to handicapped persons unless it provides such medical services to nonhandicapped persons. It could not, however, refuse to treat the burns of a deaf person because of his or her deafness. Appendix A, Paragraph 36, Section 504 Regulation, 45 C.F.R. § 84, 42 Fed. Reg. 22,676 (May 4, 1977).

VII. THE DECISION BELOW WAS DESIGNED FOR A LARGE SUBURBAN DISTRICT, BUT WILL AFFECT ALL DISTRICTS, REGARDLESS OF SIZE AND RESOURCES.

In the fall of 1982, the Department of Education published for comment a Notice of

Proposed Rulemaking uner the Act. 47 Fed. Reg. 33,836. Section 300.4(b)(10) of that notice suggested that the provision of related services be limited to non-medical services as designated by state law. In response to that notice, amicus surveyed its member school districts in order to provide the Department with a clear picture of the problems school districts are having with the regulations as they presently stand. School districts in 19 states, with student populations ranging from nearly one million to less than 700, responded. One main theme soon became apparent in their comments -- nearly all districts expressed their dismay that, given their limited educational budgets, they are being required to take on responsibilities better placed with other social agencies. As one survey respondent stated, "Schools in [this state] have become, by default, the major social agency servicing the health,

psychological, respite and custodial care needs of children."

Should the school districts be forced to take on these multiple roles? The answer is a most definite no. It is impossible for one body to be all things to all people. In trying to solve one portion of a problem, it is important not to overlook the needs and constraints of the whole. Judicially formulated requirements pertaining to related services are one of the most difficult, if not the single most difficult, expenditure to justify to those who are complaining about the dwindling funds available for the education of all public school children.

Alternately, should it be found necessary for the schools to take on these many tasks, the decision is one best made by the state, not the judiciary. Only the state and local governments are fully aware of the myriad considerations that go into allocating scarce

fiscal resources. Judicial tampering with this allocation of responsibility and resources will only serve to upset the careful balance that states have reached, and ultimately, do more harm than good to those it is attempting to help.

Though the Irving School District is a moderately large district with about 22,000 students, and might be able to muster the necessary resources to undertake the lower court's mandate, it must be noted that it is not a typical school district. Eighty-seven percent of the 16,000 school districts in this country have less than 5,000 students, and 25% have less than 300 students. These school districts are also under the mandate of the circuit courts that have ruled that CIC and other non-educational services must be provided to students within their bounds.

Although the lower court describes CIC as a "simple procedure," assuredly non-health

personnel such as teachers and administrators will not be inclined to willingly take on such a procedure which can result in serious illness if improperly carried out. It is difficult for personnel not trained in the health professions to recognize symptoms and the failure to do so could have dire results. Further, unless all personnel in the school are trained to perform the service, the child would not have the service available when the teacher or teacher's aide is absent from school. Thus, school districts would have to assure that health professionals are available at all times. That is an expensive proposition given the fact that many schools do not have full-time nurses on staff, and, given budget cuts, many other schools are cutting back in the number of non-teaching personnel, including school nurses.

More than 86,000 facilities are currently being used in the U.S. to educate public

school students. Meanwhile, only about 30,000 school nurses are employed by public school systems. In Oconomwoco, Wisconsin for example one nurse serves 4,900 student in nine schools. Quincy, Massachusetts has 14 full-time nurses, but they must serve 12,500 students in 26 schools. Some school districts have no full-time nurses on staff and obtain emergency care from public health service agencies. W. White, "Are You Ready to Provide the Health Services Demanded of the Schools?" American School Board Journal 25 (June 1981). These smaller districts, which lack the specialized staff to perform such tasks, will incur even higher costs than those faced by Petitioner. When one considers the full range of medical services that schools, if the decision below is taken to its logical conclusion, may soon be forced to provide, the costs begin to multiply rapidly. Under the lower court decision, schools would be

obligated to provide insulin injections, kidney dialysis, and maintain tracheostomies. Colostomy, ileostomy, and uretherostomy care may be needed by students. Students may also require naso-gastric tube feedings, treatment for pressure sores, or use of a respirator during the course of the day. American Nurses Association School Nurses Working with Handicapped Children 3, (1980). In fact, courts are requiring such services at the present time. Hawaii Department of Education v. Dorr, ____ F.2d ____, No. C.A. 82-4096 slip op. (9th Cir. Nov. 7, 1983). Because of decisions such as that below, schools of education are incorporating instruction in suctioning, CIC and dispensation of medicine in special education curricula. Education should not be forced to take on roles better assumed by school nurses. School Nurses Working with Handicapped Children, supra at 4. Yet, given the dearth of school nurses, and

funds to hire them, that may be the only alternative. To provide these services, other programs -- educational programs -- will have to be sacrificed, and the original intent of the Act, to provide an education for handicapped children, will ultimately suffer.

It is not just the direct costs of providing the related services, but also the indirect burdens that attend them that concern school districts. School boards today are wide open to tort liability claims. With insurance costs already sky high, districts will now be faced with adding an additional risk -- medical services -- to the policies which try to protect them. Many may find in the long term that it is more expedient to hire medical personnel -- thus stretching tight budgets even further -- rather than face this potential liability.

Additionally, unions across the country are already beginning efforts to have

handicapped children "triple-counted" for purposes of determining class size, because of the extra time and effort these children need. Faced with the prospect of having to provide medical services, they may seek to raise this figure even higher, if indeed, their contracts will even allow them to perform medical services, a question yet to be answered. Such fears are not groundless. In at least one case, it was noted that school personnel had filed grievances charging "violation of their contracts of employment by being required to perform duties of a medical nature outside the scope of their contractual duties." See **Hawaii Department of Education v. Dorr**, 531 F. Supp. 517 (D. Hawaii 1982). These concerns do not reflect cold hearted callousness on the part of school districts and their employees, but rather legitimate fears --"fears that they could not perform the medical procedure correctly ... fear of the personal aspects of

the procedure ... and fear of being sued if something untoward occurred during the procedure." Id.

VIII. CONCLUSION

As stated by District Judge Higginbotham in the first district court opinion in this case,

> there is a temptation here to achieve a 'humane' result. Despite the limited number of times school boards may be faced with a child requiring CIC, the interpretation of these federal statutes has wide consequences because it involves definitions of the duty of hundreds of school districts to be discharged in myriad factual patterns. The limits on this court's institutional role here gives little play for this court's humanitarian concern for Amber and her parents." 481 F. Supp. 1224, 1226.

Unfortunately, the Fifth Circuit, in reversing Judge Higginbotham, stepped out of its role as interpreter of the law and into the role of policymaker. Whatever the merits of the state providing free CIC services to

Amber Tatro, there is no merit in a court twisting the language of the statute to achieve that result. The conclusion of the court of appeals to the effect that the school district is responsible under federal law for the provision of any and all health services, which can be provided by someone other than a physician and which are needed by a handicapped child during the school day, whether or not the services are educational in nature, simply has no support under either the Education for All Handicapped Children Act or § 504.

If indeed the court below had requested policy arguments on the merits of the school district providing this service, the school district may have convinced the court on policy merits alone that its precedent is inadvisable. There are limited funds available for the education of all children, handicapped and non-handicapped alike. School

districts must use great care in deciding whether to increase educational options for the children they are charged to educate or to step into other fields and attempt to use limited funds to meet other needs, such as health needs. Whatever the policy arguments may be, there is no support for the legal interpretation devised below.

Respectfully submitted,

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APPENDIX

INSTRUCTIONS FOR CATHETERIZATION OF FEMALE

PURPOSE:

To completely empty the bladder at scheduled intervals in order to decrease the incidence of urinary tract infection.

Urine that stays stagnant in the bladder is more likely to become infected. A bladder that stays full becomes enlarged and thickened.

Scheduled emptying of the bladder allows the patient to become familiar with the difference in the sensation of a full bladder and an empty bladder.

EQUIPMENT NEEDED:

Clean catheter, metal or rubber. (Metal is best since it can be boiled repeatedly without deterioration.)
Soap and Water.
Dish to catch the urine, for example, a re-usable jar.
Large underpad, to prevent soaking bed linens.

GENERAL INSTRUCTIONS:

1. Wash hands with soap and water.

2. Get all of the equipment ready.

3. Get child ready. (If possible, put at table height since it is easier to do this procedure at this height.) Place child on her back.

GENERAL INSTRUCTION (continued):

4. Spread labia apart with one hand and wash genitalia with soap and water with the other hand, always moving in a downward direction. (Never wash in an upward direction since this will move germs from around the rectum up into the area of the bladder opening.)

5. Insert catheter in urethra and let all urine drain out of the bladder. This may take longer than you think, so do not remove catheter until the urine has stopped draining.

6. f you are unable to catheterize, contact your local Public Health Nurse or call Texas Scottish Rite Hospital.

7. Discard urine.

8. Clean catheter. Clean with soap and warm water after each use. Allow to dry and place in a clean, dry envelope.

At least once a day after the catheter has been washed with soap and water, place it in a pot of water and boil for 20 minutes. Allow the catheter to air dry and place it in a clean dry envelope.